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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/528,575 | 05/23/2005 | Hidetoshi Satake | 123255 | 8522 |
| 25944 | 7590 | 05/15/2008 | EXAMINER | |
| OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850 | | | MCGOWAN, JAMIE LOUISE | |
| ART UNIT | | PAPER NUMBER | | |
| 3671 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--------------------------------------|
| Office Action Summary | Application No. 10/528,575 | Applicant(s) SATAKE ET AL. |
| | Examiner JAMIE L. MCGOWAN | Art Unit 3671 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03/21/2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08),
 Paper No(s)/Mail Date 3/21/05, 4/10/06, 8/23/06.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Miki et al. (6,522,964).

Regarding claim 1, Miki et al. discloses a construction machine comprising:

- A variable displacement hydraulic pump (5,6)
- A single traveling actuator (8) driven with pressure oil discharged from the hydraulic pump (column 7 lines 39-43)
- A plurality of work actuators (107,108,109) driven with the pressure oil discharged from the hydraulic pump (column 7 lines 30-32)
- A plurality of control valves (4,9,10) that control flows of the pressure oil from the hydraulic pump to each of the traveling actuator and the plurality of work actuators (column 7 lines 32-35 and lines 39-43)
- A detection means (12) for detecting a drive command for the traveling actuator (column 7 lines 48-51)
- A flow rate control means for increasing a maximum flow rate of the hydraulic pump when the drive command for the traveling actuator is detected with the detection means (column 8 lines 10-17)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mika et al. (6,522,964) in view of Yokoyama (4,316,697).

While Mika et al. discloses the invention as described above, it fails to specifically disclose that the hydraulic excavator could be wheeled instead of on tracks. Like Mika et al., Yokoyama also discloses a hydraulic excavator. Unlike Mika et al., Yokoyama further discloses that a hydraulic excavator could be of either a wheeled or track type to effectively perform its function (column 1 lines 13-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the hydraulic excavator of Mika et al. wheeled as taught by Yokoyama as an alternate design choice well known in the art for providing effective motive means in the earthworking art.

5. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miki et al. (6,522,964) in view of Fujishima et al. (6,169,948).

Regarding claims 3-5, Miki et al. discloses the invention as described above, but fails to specifically disclose individual actuators for the revolving control and the two endless tracks and individual valves associated with each actuator. Like Miki et al., Fujishima et al. discloses a hydraulic system for a construction machine. Unlike Miki et al., Fujishima et al. further discloses individual actuators (3a-3f) and individual valves (5a-5f). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the individual actuators and valves for each component of the system in the device of Miki et al. as taught by Fujishima et al. to provide the operator with greater control of the equipment.

Regarding claim 6, the combination of Miki et al. and Fujishima et al. discloses that the flow rate control means (12) comprises a displacement angle control means for adjusting a maximum displacement angle of the hydraulic pump and increases the maximum displacement angle when the drive command for the traveling actuator is detected with the detection means (column 8 lines 10-17).

Regarding claim 7, the combination of Miki et al. and Fujishima et al. discloses that the flow rate control means further comprises a rotation speed control means (15) for controlling a rotation speed of the prime mover, and increases the rotation speed of the prime mover as well as increasing the maximum displacement angle of the hydraulic pump when the drive command for the traveling actuator is detected with the detection means (column 7 lines 39-56).

Regarding claim 8, the combination of Miki et al. and Fujishima et al. discloses that there are two hydraulic pumps (5,6), one of which supplies oil to at least the traveling actuator, and the other supplies oil to at least the working actuators and only the maximum displacement of the first hydraulic pump is increased when the drive command for the traveling actuator is detected with the detection means.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMIE L. MCGOWAN whose telephone number is (571)272-5064. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner
Art Unit 3671

JLM
May 7, 2008